

DEC 3 - 1980 - 9 22 AM



INTERSTATE COMMERCE COMMISSION
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

P. O. BOX 880 • JOLIET, ILLINOIS 60434
815 / 729-6622

JOHN D. MORRISON
GENERAL COUNSEL
AND SECRETARY

WILLIAM C. LEIPER
ASSISTANT GENERAL COUNSEL
ASSISTANT SECRETARY

MICHAEL T. REILLY
ATTORNEY
ASSISTANT SECRETARY

ROBERT N. GENTILE
ATTORNEY

December 3, 1980

PLEASE REPLY TO
P. O. BOX 536
PITTSBURGH, PA. 15230

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Recordation of Documents

Dear Ms. Mergenovich:

Pursuant to the provisions of 49 USC §11303 (formerly §20c of the Interstate Commerce Act), enclosed herewith for recordation by the Commission are ten executed counterparts of the following agreements:

Equipment Trust Agreement, dated as of November 1, 1980, between Mellon Bank, N.A., trustee and Elgin, Joliet and Eastern Railway Company (EJ&E).

The names and addresses of the parties to the Equipment Trust Agreement are:

Trustee-Lessor:

Mellon Bank, N.A.
Mellon Square
Pittsburgh, Pennsylvania 15219

Guarantor of Equipment Trust Certificates - Lessee:

Elgin, Joliet and Eastern Railway Company
P.O. Box 536
Pittsburgh, Pennsylvania 15230

The Equipment as defined in and covered by the Equipment Trust Agreement consist of six hundred eighty (680) 52 foot, 6 inch 100-ton railroad gondola cars, and bear road numbers EJ&E 87300-87979 (both inclusive) (AAR Mechanical Designation GB).

Ms. Agatha L. Mergenovich

-2-

December 3, 1980

Please return nine executed counterparts of the
Railroad Equipment Improvement Agreement to:

Michael T. Reilly, Esq.
Elgin, Joliet and Eastern Railway Company
P.O. Box 536
Pittsburgh, Pennsylvania 15230

A check in the amount of \$50.00 is enclosed to cover
the required recordation fee.

Sincerely,

Michael T. Reilly
Michael T. Reilly

MTR/rja

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Michael T. Reilly
Elgin, Joliet & Eastern Rlwy. Co.
P. O. Box 536
Pittsburgh, PA. 15230

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/3/80 at 9:00AM, and assigned recordation number(s). 12518

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

12518
RECORDATION NO. Filed 1425

DEC 3 - 1980-9 00 AM

INTERSTATE COMMERCE COMMISSION

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
EQUIPMENT TRUST NO. 80-1

EQUIPMENT TRUST AGREEMENT

Between

MELLON BANK, N.A.,
Trustee,

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Dated as of November 1, 1980

TABLE OF CONTENTS*

	<u>Page</u>
ARTICLE ONE. Forms of Trust Certificate, Interest Coupon and Guarantee	T-2
ARTICLE TWO. Definitions	T-9
ARTICLE THREE. Trust Certificates and Issuance Thereof	T-12
Section 3.01. Issuance of Trust Certificates ...	T-12
Section 3.02. Interests Represented by Trust Certificates; Interest; Maturity	T-12
Section 3.03. Form, Execution and Character- istics of Trust Certificates ...	T-13
Section 3.04. Replacement of Lost Trust Certificates	T-16
ARTICLE FOUR. Acquisition of Trust Equipment by Trustee; Deposited Cash	T-17
Section 4.01. Acquisition of Equipment by Trustee	T-17
Section 4.02. Payment of Deposited Cash	T-18
Section 4.03. Payment of Deficiency	T-18
Section 4.04. Supporting Papers	T-18
ARTICLE FIVE. Lease of Trust Equipment to the Company	T-20
Section 5.01. Lease of Trust Equipment	T-20
Section 5.02. Equipment Automatically Subjected	T-20
Section 5.03. Additional and Substituted Equipment Subject Hereto	T-20
Section 5.04. Rental Payments	T-20
Section 5.05. Termination of Trust	T-22
Section 5.06. Indemnity	T-22

* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

	<u>Page</u>
Section 5.07. Maintenance of Trust Equipment; Casualty Occurrences	T-23
Section 5.08. Reports	T-26
Section 5.09. Possession of Trust Equipment	T-26
Section 5.10. Marking of Trust Equipment	T-27
Section 5.11. Rules, Laws and Regulations	T-28
ARTICLE SIX. Events of Default and Remedies	T-28
Section 6.01. Events of Default	T-28
Section 6.02. Remedies	T-32
Section 6.03. Application of Proceeds	T-33
Section 6.04. Waivers of Default	T-34
Section 6.05. Obligations of Company Not Affected by Remedies	T-35
Section 6.06. Company To Deliver Trust Equipment to Trustee	T-35
Section 6.07. Trustee To Give Notice of Default	T-36
Section 6.08. Control by Holders of Trust Certificates	T-36
Section 6.09. Limitations on Suits by Holders of Trust Certificates and Interest Coupons	T-36
Section 6.10. Unconditional Right of Holders of Trust Certificates To Sue for Principal and Interest	T-37
Section 6.11. Remedies Cumulative; Subject to Mandatory Requirements of Law ..	T-37
ARTICLE SEVEN. Additional Agreements by the Company	T-37
Section 7.01. Guarantee of Company	T-37
Section 7.02. Discharge of Liens	T-38
Section 7.03. Further Assurances	T-39
Section 7.04. Merger, Consolidation or Sale of Assets	T-39
Section 7.05. Recording	T-39
ARTICLE EIGHT. Concerning the Holders of Trust Certificates	T-40
Section 8.01. Evidence of Action Taken by Holders of Trust Certificates ..	T-40

	<u>Page</u>
Section 8.02. Proof of Execution of Instruments and of Holding of Trust Certificates	T-40
Section 8.03. Trust Certificates Owned by Company	T-41
Section 8.04. Right of Revocation of Action Taken	T-41
Section 8.05. Amendment or Waiver	T-42
ARTICLE NINE. The Trustee	T-42
Section 9.01. Acceptance of Trust	T-42
Section 9.02. Duties and Responsibilities of the Trustee	T-42
Section 9.03. Application of Rentals	T-44
Section 9.04. Funds May Be Held by Trustee; Investments	T-45
Section 9.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title	T-46
Section 9.06. Resignation and Removal; Appointment of Successor Trustee	T-46
Section 9.07. Acceptance of Appointment by Successor Trustee	T-47
Section 9.08. Merger or Consolidation of Trustee	T-48
Section 9.09. Return of Certain Moneys to Company	T-48
ARTICLE TEN. Miscellaneous	T-48
Section 10.01. Rights Confined to Parties and Holders	T-48
Section 10.02. No Recourse	T-49
Section 10.03. Binding upon Assigns	T-49
Section 10.04. Notices	T-49
Section 10.05. Effect of Headings; Date Executed; Governing Law; and Counterparts	T-50
SCHEDULE I--List of Equipment	T-52

EQUIPMENT TRUST AGREEMENT dated as of November 1, 1980, between MELLON BANK, N.A., a national banking association ("Trustee"), and ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, an Indiana and Illinois corporation ("Company").

WHEREAS the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein;

WHEREAS the Company and the manufacturer of the railroad equipment described herein have entered into an agreement (the "Manufacturing Agreement") providing for the purchase of such railroad equipment by the Company;

WHEREAS title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof;

WHEREAS Elgin, Joliet and Eastern Railway Company Equipment Trust Certificates, No. 80-1 ("Trust Certificates"), are to be issued and sold in an aggregate principal amount not exceeding the Total Authorized Issue specified in the forms of Trust Certificate included herein;

WHEREAS the Trust Certificates shall be in one of the forms hereinafter set forth and the proceeds of the issuance thereof are to be deposited with the Trustee to constitute a fund, to be known as ELGIN, JOLIET AND EASTERN RAILWAY COMPANY EQUIPMENT TRUST, NO. 80-1, to be applied by the Trustee in payment of the Cost of the Trust Equipment (as defined in Section 2.01), the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

WHEREAS it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof and interest thereon as hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto

hereby agree as follows:

ARTICLE ONE

Forms of Trust Certificate, Interest Coupon and Guarantee

SECTION 1.01. Forms of Trust Certificate,
Interest Coupon and Guarantee. The Trust Certificates,
the interest coupons to be attached to Trust Certificates
with interest coupons and the guarantee to be endorsed
on the Trust Certificates by the Company are to be sub-
stantially in the following forms:

[FORM OF FULLY REGISTERED TRUST CERTIFICATE]

\$

No. R-

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

EQUIPMENT TRUST CERTIFICATE

No. 80-1

Total Authorized Issue \$20,000,000

MELLON BANK, N.A., Trustee

MELLON BANK, N.A., Trustee ("Trustee"), under
an Equipment Trust Agreement ("Agreement") dated as of
November 1, 1980, between the Trustee and ELGIN, JOLIET
AND EASTERN RAILWAY COMPANY ("Company"), hereby certifies
that
or registered assigns, is entitled to an interest in the
principal amount of \$ in Elgin, Joliet
and Eastern Railway Company Equipment Trust, No. 80-1,
payable on December 1, 1985, and to interest on such
principal amount from the date hereof until such principal
amount becomes due, payable semiannually on June 1 and
December 1 in each year, commencing on June 1, 1981,
at the rate of 10.2% per annum, with interest on any
overdue principal and interest, to the extent legally
enforceable, at the rate of 11.2% per annum. Payments
of principal and interest shall be made by the Trustee
to the registered holder hereof at the agency of the
Trustee in the Borough of Manhattan, City and State of

New York, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Notwithstanding the provisions of the next preceding sentence, in the case of payments of interest on this Trust Certificate, upon request of the registered holder hereof, the Trustee will, subject to timely receipt of the rental payments under the Agreement, mail its check, or on request of the holder the Trustee will wire New York Clearing House funds, to the account of such registered holder at such bank as it may designate by notice in writing to the Trustee, in the case of wire transfers, and in all other cases, to such registered holder at his address shown on the registry books maintained by the Trustee. Each such payment shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement. Interest shall be computed hereunder on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding the Total Authorized Issue set forth above, and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the Trustee at its corporate trust office in Pittsburgh, Pennsylvania) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

The Trust Certificates are issuable as bearer Trust Certificates with interest coupons attached, registrable as to principal, in the denomination of \$2,500,000, and as fully registered Trust Certificates in denominations of \$1,000,000 and any larger multiple of \$100,000. The Trust Certificates with interest coupons and the fully registered Trust Certificates and the several denominations of fully registered Trust Certificates are interchangeable upon presentation thereof at said agency of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

Subject to the provisions of Section 3.03 of the Agreement, this Certificate is transferable in whole or in part by the registered holder hereof in person or by duly

authorized attorney on the books of the Trustee upon surrender to the Trustee, at its said agency, of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new fully registered Trust Certificate or Certificates for the then unpaid aggregate principal amount hereof (and payable as herein provided) will be issued to the transferee in exchange herefor and, if less than the entire unpaid principal amount hereof is transferred, a balance piece therefor will be issued to the transferor. Prior to due presentment for registration of transfer, the Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount (and interest accrued thereon) represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents, by his signature or a facsimile thereof, and its corporate seal or facsimile thereof to be hereunto affixed or hereon imprinted and to be attested by one of its Authorized Officers by his signature.

Dated as of

MELLON BANK, N.A., Trustee,

by

Attest:

Vice President

Authorized Officer

[FORM OF TRUST CERTIFICATE WITH INTEREST COUPONS]

\$2,500,000

No.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

EQUIPMENT TRUST CERTIFICATE

No. 80-1

Total Authorized Issue \$20,000,000

MELLON BANK, N.A., Trustee

MELLON BANK, N.A., Trustee ("Trustee"), under an Equipment Trust Agreement ("Agreement") dated as of November 1, 1980, between the Trustee and ELGIN, JOLIET AND EASTERN RAILWAY COMPANY ("Company"), hereby certifies that the bearer, or, if this Certificate is registered, as to principal, the registered holder hereof, is entitled to an interest in the principal amount of \$2,500,000 in Elgin, Joliet and Eastern Railway Company Equipment Trust, No. 80-1, payable on December 1, 1985, upon presentation and surrender of this Certificate to the Trustee at its agency in the Borough of Manhattan, City and State of New York, and to interest on such principal amount from the date hereof until such principal amount becomes due, payable semiannually on June 1 and December 1 in each year, commencing on June 1, 1981, at the rate of 10.2% per annum, upon presentation and surrender of the interest coupons annexed hereto, as they severally mature, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 11.2% per annum. Payments of principal and interest shall be made by the Trustee at its said agency in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Each such payment shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement. Interest shall be computed hereunder on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not

exceeding the Total Authorized Issue set forth above, and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the Trustee at its corporate trust office in Pittsburgh, Pennsylvania) for a more complete statement of the terms and provisions thereof, to all of which the holder hereof, by accepting this Certificate, assents.

The Trust Certificates are issuable as bearer Trust Certificates with interest coupons attached, registrable as to principal, in the denomination of \$2,500,000, and as fully registered Trust Certificates in denominations of \$1,000,000 and any larger multiple of \$100,000. The Trust Certificates with interest coupons and the fully registered Trust Certificates and the several denominations of fully registered Trust Certificates are interchangeable upon presentation thereof at said agency of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

This Certificate may be registered as to principal at said agency of the Trustee in the name of the holder hereof, and such registration noted hereon by or on behalf of the Trustee. Thereafter title to the interest represented by this Certificate shall pass only by transfer registered at said office unless and until a transfer to bearer shall have been similarly registered and noted hereon. Such registration shall apply only to the principal of this Certificate and not to the interest coupons hereunto attached, which shall continue to be payable to bearer and transferable by delivery.

Every bearer or registered holder of this Certificate and of the attached interest coupons, by accepting the same, agrees with the Trustee, with the Company and with every subsequent bearer or registered holder hereof and thereof that this Certificate (unless registered in the name of the holder) and such coupons shall be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery by any person having possession of the same, however such possession may have been acquired; and the Trustee, any agent of the

Trustee and the Company may treat the bearer of this Certificate, or the registered holder hereof if this Certificate be registered in his name as above provided, and the bearer of any interest coupon attached hereto whether or not this Certificate be so registered, as the absolute owner of this Certificate or of said coupons, as the case may be, for all purposes, and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount (and interest accrued thereon) represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents, by his signature or a facsimile thereof, and its corporate seal or facsimile thereof to be hereunto affixed or hereon imprinted and to be attested by one of its Authorized Officers by his signature.

Dated as of

MELLON BANK, N.A., Trustee,

by

Attest:

Vice President

Authorized Officer

[FORM OF INTEREST COUPON]

\$

No.

Due to the bearer hereof on 1, 198 ,
on surrender hereof to the undersigned at its agency in
the Borough of Manhattan, City and State of New York,
\$ being the semiannual interest then due on Cer-
tificate No. of Elgin, Joliet and Eastern Railway
Company Equipment Trust, No. 80-1, payable only out of
rentals or other moneys received by the undersigned and
applicable to such payment under the Equipment Trust
Agreement referred to therein.

MELLON BANK, N.A.,
Trustee,

by

Vice President

[FORM OF GUARANTEE FOR FULLY REGISTERED
TRUST CERTIFICATES]

GUARANTEE

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 11.2% per annum, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY,

by

Vice President-Finance

[FORM OF GUARANTEE FOR TRUST CERTIFICATES
WITH INTEREST COUPONS]

GUARANTEE

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, for a valuable consideration, hereby unconditionally guarantees to the bearer or registered holder of the within Certificate, and to the bearer or bearers of the interest coupons appertaining thereto, respectively, the prompt payment when due of the principal of said Certificate and of the interest thereon specified in said coupons with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 11.2% per annum, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY,

by

Vice President-Finance

ARTICLE TWO

Definitions

SECTION 2.01. Definitions. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, control (including controlled by and under common control with), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Company shall mean Elgin, Joliet and Eastern Railway Company and any successor or successors to it complying with the provisions of Section 7.04.

Corporate Trust Office shall mean the agency of the Trustee in the Borough of Manhattan, City and State of New York, such agency initially being Manufacturers Hanover Trust Company.

Cost, when used with respect to Equipment, shall mean the actual cost thereof (including freight charges, if any, from the manufacturer's plant to a point of delivery to the Company and applicable local or state sales taxes, if any), as evidenced by the manufacturer's invoice with respect to such Equipment.

Default shall mean

(1) any Event of Default; and

(2) the occurrence and continuance of an event which, with the giving of notice or the passage of time or both, would constitute an Event of Default.

The Company shall "be in Default" if a Default shall have occurred and be continuing.

Deposited Cash shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 3.01 and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 9.04, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(B)(1)(b) and on deposit with the Trustee.

Depreciated Cost shall mean the original Cost of a unit of Equipment less an amount equal to 20% of such Cost for each full year that such unit has been in service.

Equipment shall mean standard-gauge rolling stock acquired or first put into service no earlier than September 1, 1980.

Event of Default shall mean any event specified in Section 6.01 to be an Event of Default.

The word holder, when used with respect to Trust Certificates and interest coupons, shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the registered owner of a fully registered Trust Certificate, the bearer of a Trust Certificate with interest coupons not registered as to principal, the bearer of an interest coupon and the registered owner of a Trust Certificate with interest coupons registered as to principal.

Investments shall mean (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest; (ii) open market commercial paper given the highest rating by a national credit agency; and (iii) certificates of deposit of commercial banks (including the Trustee) in the United States of America having capital and surplus of at least \$50,000,000.

Officer's Certificate shall mean a certificate signed by the President, any Vice President, the Controller, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and who may, unless in a particular instance the Trustee shall otherwise require, be an employee of or counsel to the Company. The acceptance by the Trustee of, and its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Penalty Rate shall mean the rate per annum specified for interest on overdue principal and interest in the form of guarantee set forth in Section 1.01.

Purchase Agreement shall mean the Purchase Agreement dated December 3, 1980, between the Company and Manufacturers Hanover Trust Company, as agent for the Purchaser referred to therein, pursuant to which the Trust Certificates are being sold.

Request shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than 10 days prior to the date of delivery to the Trustee and signed on behalf of the Company by the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company.

Trust Certificates shall mean the Trust Certificates issued hereunder, and interest coupons shall mean interest coupons attached or appertaining to Trust Certificates.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement.

Trustee shall mean Mellon Bank, N.A., and, subject to the provisions of Article Nine, any successor as trustee hereunder.

The words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE THREE

Trust Certificates and Issuance Thereof

SECTION 3.01. Issuance of Trust Certificates. Upon the sale of any of the Trust Certificates, an amount equal to the principal amount of the Trust Certificates so sold shall, forthwith upon the issuance thereof, be deposited in New York Clearing House funds with the Trustee.

Thereupon the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the Total Authorized Issue specified in the forms of Trust Certificate, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 3.02. Interests Represented by Trust Certificates; Interest; Maturity. Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The aggregate principal amount of the Trust Certificates will be payable in one installment on December 1, 1985. Each Trust Certificate will bear interest on the unpaid principal amount thereof, payable on June 1 and December 1 of each year, commencing June 1, 1981. Such interest shall be at the rate specified thereon, with interest payable on overdue installments of principal and interest at the Penalty Rate. Interest coupons evidencing the rights of the bearers thereof to the interest on the Trust Certificates with interest coupons shall be annexed to such Trust Certificates.

The principal of and interest on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the next preceding sentence, in the case of payments of interest to be made on a fully registered Trust Certificate not then to be paid in

full, upon request of the holder of such Trust Certificate, on the day each such payment is due the Trustee will, subject to timely receipt of the rental payments under Section 5.04, mail its check, or on request of the holder the Trustee will initiate a wire by 11:00 a.m. Pittsburgh, Pennsylvania, time, of New York Clearing House funds, to the account of such registered holder at such bank as it may designate by notice in writing to the Trustee, in the case of wire transfers, and in all other cases, to such registered holder at his address shown on the registry books maintained by the Trustee or at such other address as may be directed in writing by such holder at least three business days prior to the date the payment is due (and the Company agrees to make its rental payments pursuant to Section 5.04 at such times and in such funds as will enable the Trustee to comply herewith).

SECTION 3.03. Form, Execution and Characteristics of Trust Certificates. (a) The Trust Certificates, the interest coupons to be attached to the Trust Certificates with interest coupons and the guarantee to be endorsed on the Trust Certificates by the Company as provided in Section 7.01 shall be in substantially the forms set forth in Article One.

(b) The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of its President, one of its Vice Presidents or one of its Assistant Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of an Authorized Officer. The interest coupons to be attached to the Trust Certificates with interest coupons shall be authenticated by the manual or facsimile signature of any present or future President, Vice President or Assistant Vice President of the Trustee. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates or on the interest coupons shall cease to be such officer of the Trustee before the Trust Certificates or interest coupons shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates and interest coupons may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee. Before executing or delivering any Trust Certificate with interest coupons,

the Trustee shall detach and cancel all matured interest coupons, if any, thereto appertaining.

(c) The fully registered Trust Certificates (i) shall be issuable in denominations of \$1,000,000 or any larger multiple of \$100,000 and shall be numbered from R-1 consecutively upward; (ii) shall be registered, as to both principal and interest, in the name of the holders; (iii) shall be transferable in whole or in part upon presentation and surrender thereof for transfer at the Corporate Trust Office, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; (iv) shall be dated as of the date of issue unless issued in exchange or substitution for another Trust Certificate or Certificates bearing unpaid interest from an earlier date, in which case they shall be dated as of such earlier date; and (v) shall entitle the registered holder to interest from the date thereof.

(d) The Trust Certificates with interest coupons (i) shall be in the denomination of \$2,500,000 each and shall be numbered from 1 consecutively upward; (ii) shall be payable to bearer, or to the registered holder if registered as to principal in the manner as herein provided; (iii) shall be transferable by delivery unless registered as to principal as herein provided; and (iv) shall be dated as of the Closing Date (as defined in the Purchase Agreement).

(e) Fully registered Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates with interest coupons of the same maturity having all unmatured interest coupons attached or for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations, and Trust Certificates with interest coupons may be exchanged for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at the Corporate Trust Office. All Trust Certificates with interest coupons surrendered for exchange shall have attached all unmatured interest coupons appertaining thereto, and, in case at the time of any such exchange interest on the Trust Certificates is in default, they shall in addition have attached all matured interest coupons in default appertaining thereto.

(f) Any of the Trust Certificates with interest coupons may be registered as to principal in the name of the holder at the Corporate Trust Office, and such registration shall be noted on the Trust Certificate by the Trustee or its agent on behalf of the Trustee. Thereafter no transfer thereof shall be valid unless made at said office by the registered holder thereof in person, or by his duly authorized attorney, and similarly noted thereon; but the same may be discharged from registration and transferred to bearer as before. No registration, however, shall affect the interest coupons, but every such interest coupon shall continue to be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery thereof by any person in possession of the same, howsoever such possession may have been acquired.

(g) Anything to the contrary herein notwithstanding, the parties hereto and any agent of the Trustee may deem and treat the bearer of any Trust Certificate with interest coupons not registered as to principal and the bearer of any interest coupon as the absolute owner of such Trust Certificate or interest coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and shall not be affected by any notice to the contrary. The parties hereto and any agent of the Trustee may deem and treat the registered holder of any fully registered Trust Certificate or of any Trust Certificate with interest coupons registered as to principal, as the case may be, as the absolute owner of such Trust Certificate for all purposes except, in the case of Trust Certificates with interest coupons registered as to principal, payment of interest, and shall not be affected by any notice to the contrary.

(h) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

(i) For any registration, transfer or exchange, the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.

(j) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange or substitution for, or upon the transfer of the whole or any part, as the case may be, of one or more other Trust Certificates shall carry all the rights to principal and to interest accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated, or have attached thereto such interest coupons, that neither gain nor loss in interest or principal shall result from such exchange, substitution or transfer.

(k) The Trustee shall not be required to issue, register, transfer or exchange Trust Certificates for a period of 10 days next preceding any interest payment date.

SECTION 3.04. Replacement of Lost Trust Certificates. In case any Trust Certificate or the interest coupons, if any, appertaining thereto, shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate, with all unmatured interest coupons appertaining thereto, if a Trust Certificate with interest coupons of like tenor, date and maturity, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancelation of, the mutilated or defaced Trust Certificate and interest coupons, or in lieu of and in substitution for the same if lost, destroyed or stolen, and shall make payment of any matured and unpaid interest coupons appertaining to the same. The Company shall execute its guarantee on any Trust Certificates to be so delivered. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate and interest coupons, if any, alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate and interest coupons, and also shall furnish such security or indemnity as may be required by the Trustee and by the Company in their discretion (which, in the case of the original purchaser of Trust Certificates or any holder which is a government or governmental instrumentality or a bank, trust company, insurance company or similar institutional investor and which holds at least 20% in aggregate principal amount of the outstanding Trust Certificates, may at the option of such purchaser or holder be in the form of an indemnification agreement executed by such

purchaser or holder), and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and interest coupons, and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

ARTICLE FOUR

Acquisition of Trust Equipment by Trustee; Deposited Cash

SECTION 4.01. Acquisition of Equipment by Trustee. The Company, as speedily as may be, shall cause to be sold to the Trustee, as trustee for the holders of the Trust Certificates and interest coupons appertaining thereto, all the Equipment described in Schedule I hereto; provided, however, that if the Cost of the Equipment settled for under this Article Four shall equal or exceed 125% of the aggregate principal amount of Trust Certificates issued or issuable under Section 3.01 and to be sold under the Purchase Agreement, upon Request, the Trustee shall execute and deliver to the Company a supplement hereto excluding from this Agreement any Equipment not theretofore settled for under this Article Four. The Equipment shall be delivered to the person or persons designated by the Trustee as its agent or agents to accept such delivery (who may be one or more of the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery and acceptance shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other Equipment in addition to or in lieu of any units of the Equipment specifically described in Schedule I hereto (prior to the acceptance of such Equipment by the Trustee or its agent or agents), or in the event that any unit of the Equipment described in Schedule I hereto shall suffer a Casualty Occurrence as defined in Section 5.07, prior to such acceptance, the Company may cause to be sold to the Trustee other Equipment, to be substituted under the trust.

SECTION 4.02. Payment of Deposited Cash. From time to time, when and as any Equipment shall have been accepted by the Trustee or its agent or agents pursuant to Section 4.01, the Trustee shall (subject to the provisions of Sections 4.03 and 4.04) pay, upon Request, to the manufacturer of the accepted Equipment out of Deposited Cash then held by the Trustee an amount not exceeding 80% of the aggregate Cost of such Trust Equipment, as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 4.04(b).

SECTION 4.03. Payment of Deficiency. The Company covenants that, contemporaneously with any payments by the Trustee pursuant to Section 4.02, it will pay to the Trustee the advance rental provided in Section 5.04(A), and thereupon the Trustee shall, upon Request, pay to the manufacturer of the accepted Equipment, by the use of such advance rental, the portion of the aggregate Cost of the accepted Equipment not paid out of Deposited Cash as provided for in Section 4.02. The intention of this Section is that the Company shall ultimately pay not less than 20% of the Cost of all the Equipment accepted by the Trustee pursuant to this Article Four, and the Trustee and the Company shall at any time, if occasion arises, adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of the Cost thereof and the Company shall pay the remainder, to be not less than 20% of such Cost.

SECTION 4.04. Supporting Papers. The Trustee shall not pay out any Deposited Cash upon the acceptance of any unit of Equipment unless and until it shall have received:

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of the Equipment, stating that the Equipment described and specified therein by number or numbers has been delivered to, and accepted by, such agent or agents;

(b) an Officer's Certificate, which shall state (i) that such Equipment is Equipment as herein defined, (ii) that the Cost of such Equipment is an amount therein specified, (iii) that such Equipment has been marked as provided in Section 5.10 and (iv) the Company is not in Default;

(c) an invoice or invoices from the manufacturer of the Equipment;

(d) a bill or bills of sale from the manufacturer transferring all right, title and interest in and to the Equipment to the Trustee, warranting to the Trustee

that at the time of delivery of such Equipment hereunder the manufacturer had legal title to such Equipment and good and lawful right to sell such Equipment and that title to such Equipment was, at the time of such delivery, free from all claims, liens, security interests and other encumbrances of any nature arising prior to delivery of possession of the Equipment to the Company under the interim user agreement dated as of September 23, 1980 (the "Interim User Agreement"), between the manufacturer and the Company, or arising from, through or under the manufacturer, except as created by this Agreement and the Manufacturing Agreement, and releasing any security interest retained by the manufacturer under the Manufacturing Agreement;

(e) an opinion of counsel for the manufacturer to the effect that (i) the units of such Equipment, at the time of delivery thereof hereunder, were free of all claims, liens, security interests and other encumbrances of any nature arising prior to delivery of possession of the Equipment to the Company under the Interim User Agreement or arising from, through or under the manufacturer, except as created by this Agreement and the Manufacturing Agreement, and (ii) such bill or bills of sale have been duly authorized, executed and delivered and are valid and effective to transfer all right, title and interest of the manufacturer in and to such Equipment to the Trustee, free of all claims, liens, security interests or other encumbrances of any nature arising prior to delivery of possession of the Equipment to the Company under the Interim User Agreement or arising from, through or under the manufacturer prior to the delivery of such Equipment hereunder, except as created by this Agreement (such counsel being entitled to rely on a certificate of an officer of the Company as to the period from the time of any delivery of such Equipment under the Manufacturing Agreement to the time of delivery thereof hereunder); and

(f) in the case of any Equipment not specifically described in this Agreement, an Opinion of Counsel to the effect that a proper supplement hereto in respect of such Equipment has been duly executed by the Trustee and the Company and has been duly filed as required by Section 7.05.

Any Officer's Certificate delivered pursuant to this Section may state that the Cost of the Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee.

If the aggregate final Cost of the Trust Equipment shall be less than 125% of the aggregate principal amount of Trust Certificates issued hereunder, the Company will cause to be sold, assigned, transferred and set over to the Trustee by supplement hereto, subject to all the terms of this Agreement, additional Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 125% of the aggregate principal amount of Trust Certificates issued hereunder.

ARTICLE FIVE

Lease of Trust Equipment to the Company

SECTION 5.01. Lease of Trust Equipment. The Trustee does hereby let and lease to the Company all the Trust Equipment from and after the date such Trust Equipment is acquired by the Trustee to the date on which the final payment of principal of and interest on any Trust Certificate is due.

SECTION 5.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be settled for hereunder by the Trustee or its agent or agents, the same shall, ipso facto and without further instrument of lease or transfer, become subject to all the terms and provisions hereof.

SECTION 5.03. Additional and Substituted Equipment Subject Hereto. In the event that the Company shall, as provided in Section 4.01 or 5.07, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto to be executed by the Trustee and the Company and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Equipment herein specifically described.

SECTION 5.04. Rental Payments. The Company hereby accepts the lease of all the Trust Equipment, and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rental hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the acceptance of delivery of any unit of the Trust Equipment):

(A) The Company shall, at the time of making a Request pursuant to Section 4.02, pay to the Trustee, as advance rental hereunder, an amount equal to the excess of the aggregate Cost of the Trust Equipment over the portion of such Cost to be paid out of Deposited Cash as provided in Section 4.02.

(B) In addition to such advance rental the Company shall pay to the Trustee, as rental for the Trust Equipment (notwithstanding that any of the Trust Certificates or interest coupons shall have been acquired by the Company or shall not have been presented for payment), the following:

(1) (a) the expenses of the trust hereby created, including, without limitation, reasonable compensation to the Trustee and all expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments;

(2) any and all taxes, assessments and governmental charges which the Trustee as such may be required to pay, including, without limitation, all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Agreement;

(3) (a) the amounts of the interest payable on the Trust Certificates, when and as the same shall become payable, and (b) interest at the Penalty Rate from the due date, upon the amount of any installments of rental payable in respect of the principal of and interest on the Trust Certificates which shall not be paid when due, to the extent legally enforceable; and

(4) the principal of the Trust Certificates, when and as the same shall become payable, whether upon the date of maturity thereof, or by declaration or otherwise.

Nothing contained herein or in the Trust Certificates shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate or interest coupon any tax, assessment or governmental charge required by any present or future law

of any foreign government or of the United States of America, or of any state, county, municipality or other taxing authority thereof, to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate or interest coupon.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof; provided, however, that in the judgment of the Trustee and as set forth in an Opinion of Counsel which shall have been furnished to the Trustee by the Company, the rights or interests of the Trustee or of the holders of the Trust Certificates or interest coupons will not be materially endangered thereby.

SECTION 5.05. Termination of Trust. After all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee (1) such payments shall be deemed to represent payment of the full purchase price for the Company's purchase at such time of the Trust Equipment from the Trustee, (2) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and interest coupons and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) title to all the Trust Equipment shall vest in the Company and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery thereof to and the possession and use thereof by the Company pursuant to this Agreement.

SECTION 5.06. Indemnity. The Company agrees to indemnify the Trustee and the holders of the Trust Certificates against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects

with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment, or any unit thereof, may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates or interest coupons. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

SECTION 5.07. Maintenance of Trust Equipment; Casualty Occurrences. The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense, unless and until it becomes lost, stolen, destroyed or irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain, or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the final maturity date of the Trust Certificates, being hereinafter called a "Casualty Occurrence"). Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence the Company shall, within 30 days after it shall have been determined that such unit has suffered a Casualty Occurrence, deliver to the Trustee an Officer's Certificate describing such unit and stating the Casualty Payment (as hereinafter defined in this Section 5.07) in respect thereof. When the total Casualty Payments of all units of the Trust Equipment having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section 5.07) shall exceed \$100,000 (or such lesser amount as the Company may elect), the Company, within 30 days of such event, shall deposit with the Trustee an amount in cash equal to the Casualty Pay-

ments of such units as of the date of the Casualty Occurrence in respect of each thereof. Thereafter, the rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence.

Any money paid to the Trustee pursuant to this Section 5.07 hereof shall, so long as no Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Company shall direct by a Request filed with the Trustee, to or toward the Cost of a unit or units of Equipment to replace such unit or units of Trust Equipment having suffered a Casualty Occurrence and which unit or units of Equipment shall be of a quality and utility at least equal to such unit or units of Trust Equipment having suffered a Casualty Occurrence. In case of replacement the amount to be paid by the Trustee in respect of any replacing unit of Equipment shall not exceed the lesser of the Depreciated Cost or fair value of such unit as of the date of the Casualty Occurrence in respect of the unit being replaced, as determined by an Officer's Certificate to be filed as hereinafter provided.

The payment to be made to the Trustee in respect of each unit of Trust Equipment having suffered a Casualty Occurrence (the "Casualty Payment") shall be deemed to be the lesser of the Depreciated Cost or fair value thereof.

So long as no Event of Default shall have occurred and be continuing, any money paid to the Trustee pursuant to this Section 5.07 shall be invested, pending its application as hereinabove provided, in Investments as provided in Section 9.04 hereof.

The Company will cause any replacing unit of Equipment to be marked as provided in Section 5.10. Any and all such replacements of Equipment shall constitute accessions to the Trust Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Trust Equipment delivered hereunder and shall be included in the term "Trust Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Trustee subject to the provisions hereof, and the Company shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the

Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Trustee to such replacements. All such replacements shall be warranted in like manner as the units of Trust Equipment replaced.

Whenever the Company shall file with the Trustee, pursuant to the foregoing provisions of this Section 5.07, a Request to apply money to or toward the cost of a replacing unit of Equipment, the Company shall file therewith in such number of counterparts as may reasonably be requested:

(a) an Officer's Certificate certifying that such replacing unit is Equipment as defined herein and has been marked as required by the provisions of this Section 5.07, and certifying the Depreciated Cost of such replacing unit and that the fair value of such unit is not less than the Depreciated Cost thereof, or if the fair value of such unit is less than the Depreciated Cost thereof, certifying such fair value; and

(b) an Opinion of Counsel for the Company that title to such replacing unit is vested in the Trustee free and clear of all liens and encumbrances, and that such unit has come under and become subject to this Agreement.

If an Event of Default shall have occurred and be continuing, then so long as such Event of Default shall continue all money then held by the Trustee pursuant to this Section 5.07 shall be applied by the Trustee as if such money were money received upon the sale of Equipment pursuant to Section 6.03.

In order to facilitate the sale, or other disposition of any unit of Trust Equipment suffering a Casualty Occurrence, the Trustee shall upon Request, after deposit by the Company of a sum equal to the Casualty Payment of such unit, execute and deliver to the Company's vendee, assignee or nominee, a bill of sale (without warranties) for such unit, and such other documents as may be required to release such unit from the terms and scope of this Agreement, in such form as may be reasonably requested by the Company.

In the event that prior to the expiration of the term of this Agreement, the use of any unit of Trust Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before the final maturity of the Trust Certificates, the Company's duty to pay the rentals in respect thereof shall continue for the duration of such requisitioning or taking. The Company shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 5.08. Reports. On or before April 1 in each year, commencing with the year 1981, the Company will furnish to the Trustee an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the units of Trust Equipment then subject to this Agreement, the amount, description and numbers of all units of Trust Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Trust Equipment as the Trustee may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 5.10 hereof shall have been preserved or replaced.

SECTION 5.09. Possession of Trust Equipment. The Company, so long as it shall not be in Default under this Agreement, shall be entitled to the possession of the Trust Equipment and the use thereof by it, any Affiliate of the Company upon the lines of railroad owned or operated by the Company or any such Affiliate either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad over which the Company or any such Affiliate has trackage rights, and the Trust Equipment may also be used upon connecting and other railroads in the usual interchange of traffic, provided, however, that such use shall be subject to all the terms and conditions of this Agreement. The Company may lease any unit or units of the Trust Equipment to an Affiliate but only upon and subject to all the terms and conditions of this Agreement and provided that no such lease shall relieve the Company of any liability or obligations hereunder which shall be those of a principal and not a surety.

The Company shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Company shall not modify any unit of Trust Equipment without the written authority and approval of the Trustee which shall not be unreasonably withheld, provided that no such approval shall be required if and to the extent such modification is required by Section 5.11 hereof. Any parts (except communications, signal and automatic control equipment and devices having a similar use which are added to any unit of Trust Equipment by the Company, the cost of which is not included in the Cost of such unit and which are not required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other regulatory body) installed or replacements made by the Company upon any unit of Trust Equipment shall be considered accessions to such unit of Trust Equipment and title thereto shall be immediately vested in the Trustee, without cost or expense to the Trustee.

SECTION 5.10. Marking of Trust Equipment. The Company agrees that, at the time of delivery to the Trustee pursuant to this Agreement of each unit of Equipment, there shall be plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height:

"THIS UNIT SUBJECT TO A FINANCING
AGREEMENT RECORDED WITH THE I.C.C."

or other similar words approved in an Opinion of Counsel delivered to the Trustee.

In case, prior to the termination of the lease provided for in this Article Five, any of such marks shall at any time be removed, defaced, obliterated or destroyed, the Company shall cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee and which shall be filed and recorded by the Company in like manner as this Agreement.

Except as above provided, the Company will not

allow the name of any person, association or corporation to be placed on the Trust Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Company may cause the Trust Equipment to be lettered with the names or initials or other insignia customarily used by the Company or its Affiliates on railroad equipment used by it for convenience of identification.

SECTION 5.11. Rules, Laws and Regulations. During the term of this Agreement the Company will comply in all respects with all laws of the jurisdictions in which its operations involving the Trust Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Trust Equipment, to the extent that such laws and rules affect the operation or use of the Trust Equipment; and in the event that such laws or rules require the alteration of the Trust Equipment, the Company will conform therewith at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Company may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Trustee, adversely affect the property or rights of the Trustee hereunder.

ARTICLE SIX

Events of Default and Remedies

SECTION 6.01. Events of Default. The Company covenants and agrees that in case:

(a) the Company shall default in the timely payment of any part of the rental payable under Section 5.04 hereof for more than five days, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease (including, for the purpose of this clause, contracts for the use thereof) of any of the Trust Equipment, or,

except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or

(c) default shall be made in the performance of any other terms or provisions hereof or in the Purchase Agreement, and such default shall continue for 30 days after actual knowledge thereof by the Company or 30 days after written notice from the Trustee to the Company specifying the default and demanding that the same be remedied, or

(d) the lease provided for herein shall be terminated by operation of law, or

(e) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) shall be filed by or against the Company, and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company under this Agreement, the guarantee endorsed on the Trust Certificates and the Purchase Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended, or.

(f) any other proceeding shall be commenced by or against the Company for any relief which includes, or might result in, any modification of the obligations of the Company hereunder or under the guarantee endorsed on the Trust Certificates under any bankruptcy or insolvency laws, or laws relating to the relief of debtors,

readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company under this Agreement, the guarantee endorsed on the Trust Certificates and under the Purchase Agreement, shall not be and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Company or for its property in connection with any such proceeding within 60 days after such proceeding shall have been commenced,

then, in any such case (herein sometimes called an "Event of Default"), the Trustee in its discretion may, and upon the written request of the holders of 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals thereafter (including any unpaid advance rental, but not including rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 5.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Rate, to the extent legally enforceable, on any portion thereof overdue.

In case one or more Events of Default shall happen, the Trustee in its discretion also may, and upon the written request of the holders of 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any installment of rental payable pursuant to Section 5.04 in respect of the principal of, or interest on, the Trust Certificates when and as the same shall have become due and payable hereunder, and such Default shall have con-

tinued for a period of five days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor upon the Trust Certificates under Title 11 of the United States Code or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in case of any other judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals then or thereafter payable (including any unpaid advance rental, but not including rentals required for the payment of interest accruing after the date of such declaration) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificates and interest coupons allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and interest coupons and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorgani-

zation is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates and interest coupons, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates or interest coupons, may be enforced by the Trustee without the possession of any of the Trust Certificates or interest coupons or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates and interest coupons. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates and interest coupons, and it shall not be necessary to make any holders of the Trust Certificates or interest coupons parties to such proceedings.

SECTION 6.02. Remedies. In case of the happening and continuance of any Event of Default, the Trustee may by its agents enter upon the premises of the Company and any of its Affiliates or sublessees (or other persons having acquired the use of the Trust Equipment) where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company and the principal of all the then outstanding Trust Certificates, as provided in Section 6.01) may sell

the same or any part thereof, free from any and all claims of the Company at law or in equity in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of the then outstanding Trust Certificates and interest coupons, all subject to any mandatory requirements of law applicable thereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement.

SECTION 6.03. Application of Proceeds. If the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02, all payments made by the Company to the Trustee, and the proceeds of any judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certifi-

cates or a part thereof, or interest thereon), shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the Penalty Rate, to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Rate, to the extent legally enforceable, from the last preceding interest payment date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then first to interest and then to principal.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee, there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 6.04. Waivers of Default. Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 6.01, the holders of a majority in principal amount of the then outstanding Trust Certificates may on behalf of the holders of all the Trust Certificates waive any past Default and its consequences, except a Default in the payment of any installment of rental then due and payable pursuant to Section 5.04 in respect of the principal of, or interest on, the Trust Certificates, but no such waiver shall extend to or affect any subsequent Default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 6.01, all arrears of rent (with interest at the Penalty Rate upon any overdue

installments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Default, and all other sums which shall have become due and payable by the Company hereunder shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other Default shall be made good or secured to the satisfaction of the Trustee and the holders of the Trust Certificates, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the then outstanding Trust Certificates, shall by written notice to the Company waive the Default by reason of which there shall have been such declaration or declarations and the consequences of such Default, but no such waiver shall extend to or affect any subsequent Default or impair any right consequent thereon.

SECTION 6.05. Obligations of Company Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate or interest coupon, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guarantee endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and interest coupons and waives notice of presentation, of demand and of any Default in the payment of the principal of and interest on the Trust Certificates.

SECTION 6.06. Company To Deliver Trust Equipment to Trustee. In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, forthwith and in the usual manner and at usual speed, cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises approved by the

Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 6.07. Trustee To Give Notice of Default. The Trustee shall give to the holders of the Trust Certificates notice of each Default hereunder known to the Trustee promptly after it has knowledge thereof, unless remedied or cured before the giving of such notice.

SECTION 6.08. Control by Holders of Trust Certificates. The holders of a majority in principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken.

SECTION 6.09. Limitations on Suits by Holders of Trust Certificates and Interest Coupons. No holder of any Trust Certificate or interest coupon shall have any right by virtue or by availing of any provision of this Agreement to institute any action or proceeding at law or in equity or in bankruptcy or otherwise, upon or under or with respect to this Agreement, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of a Default and of the continuance thereof, as herein provided, and unless also the holders of a majority in principal amount of the then outstanding Trust Certificates shall have made written request to the Trustee to institute such action or proceeding in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to

Section 6.08; and no one or more holders of Trust Certificates or interest coupons shall have any right in any manner whatever to affect or prejudice the rights of any other holder of Trust Certificates or interest coupons, or to obtain or seek to obtain priority over any other such holder or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Trust Certificates and interest coupons. For the protection and enforcement of the provisions of this Section, each and every holder of a Trust Certificate or interest coupon and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 6.10. Unconditional Right of Holders of Trust Certificates To Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate or interest coupon to receive payment of the principal of, and interest on, such Trust Certificate or any interest evidenced by such interest coupon, when and as the same shall become due and payable hereunder, whether by acceleration or otherwise, or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 6.11. Remedies Cumulative; Subject to Mandatory Requirements of Law. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates and interest coupons shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity; and such remedies shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

ARTICLE SEVEN

Additional Agreements by the Company

SECTION 7.01. Guarantee of Company. The Company

guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon until paid at the Penalty Rate, to the extent legally enforceable), and shall receive interest thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates and the interest coupons (and, if not so paid, with interest thereon until paid at the Penalty Rate, to the extent legally enforceable); and the Company agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guarantee of the prompt payment of the principal thereof and of the interest thereon, in substantially the forms herein set forth. Any holder of a Trust Certificate or interest coupon may sue the Company on said guarantee without first resorting to any remedy hereunder. Said guarantee so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its President, a Vice President or the Treasurer. In case any officer of the Company whose signature shall appear on said guarantee shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guarantee shall nevertheless be as effective and binding upon the Company as though the person who signed said guarantee had not ceased to be or had then been such officer.

SECTION 7.02. Discharge of Liens. The Company agrees that it will pay and discharge, or make adequate provision for the payment or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings; provided, however, that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates or interest coupons and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

If the Company does not forthwith pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any such debt, tax, charge, assessment, obligation or claim as required by this Section, the Trustee may, but shall not be obligated to, pay and discharge the same and any amounts so paid shall be secured by and under this Agreement until reimbursed by the Company.

SECTION 7.03. Further Assurances. The Company agrees to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

SECTION 7.04. Merger, Consolidation or Sale of Assets. The Company agrees not to merge or consolidate with any other corporation or to sell, assign or transfer all or substantially all of the property of the Company to any other corporation unless the survivor of such merger or consolidation or such transferee shall be a solvent corporation organized under the laws of the United States of America or a state thereof or the District of Columbia and such survivor or such transferee (if not the Company) shall assume all the obligations and liabilities of the Company hereunder and as guarantor of the Trust Certificates and shall not be in default hereunder.

SECTION 7.05. Recording. The Company will, promptly after the execution and delivery of this Agreement (and prior to the delivery of any Trust Equipment to the Trustee hereunder) and each supplement hereto, respectively, cause this Agreement and each such supplement to be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by the law of any jurisdiction in which use of the Equipment is permitted by Section 5.09 or reasonably requested by the Trustee for the purpose of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and interest coupons and of fully carrying out and effectuating this Agreement and the intent hereof.

Promptly after the execution and delivery of

this Agreement and each supplement hereto, the Company will furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed so as to effectively protect the title of the Trustee to the Trust Equipment and its rights and the rights of the holders of the Trust Certificates and interest coupons thereunder and hereunder as provided in the next preceding paragraph and reciting the details of such action.

ARTICLE EIGHT

Concerning the Holders of Trust Certificates

SECTION 8.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate unpaid principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 8.02. Proof of Execution of Instruments and of Holding of Trust Certificates. The execution of any instrument by a holder of Trust Certificates or his agent or proxy may be approved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer.

The fact of the holding by any holder of Trust Certificates with interest coupons transferable by delivery, and the principal amounts and serial numbers of such Trust Certificates and the date of his holding the same, may be proved by the production of such Trust Certificates or by a certificate executed by any trust company, bank, banker

or broker satisfactory to the Trustee wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory. Each such certificate shall be dated and shall state that on the date thereof a Trust Certificate with interest coupons of a specified principal amount and bearing a specified serial number was deposited with or exhibited to such trust company, bank, banker or broker by the person named in such certificate. Any such certificate may be issued in respect of one or more Trust Certificates specified therein. The Trustee may consider such ownership as continuing until written notice to the contrary is received by it.

The ownership of registered Trust Certificates, with or without interest coupons, may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

The Trustee may require such additional proof of any matter referred to in this Section 8.02 as it shall deem necessary.

SECTION 8.03. Trust Certificates Owned by Company. In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by an Affiliate of the Company or any other such obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

SECTION 8.04. Right of Revocation of Action Taken. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the required percentage in principal amount of the then outstanding Trust Certificates specified in this Agreement, any holder of a Trust Certificate may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action insofar as concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and

of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the required percentage in principal amount of the then outstanding Trust Certificates specified in this Agreement shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

SECTION 8.05. Amendment or Waiver. Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than a majority in principal amount of the then outstanding Trust Certificates (unless otherwise specifically provided in this Agreement); provided, however, that without the consent of the holders of 100% in principal amount of the then outstanding Trust Certificates no such amendment or waiver shall (1) reduce the amount of principal, change the maturity date for the payment of principal or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates without the consent of the holder of each Trust Certificate or interest coupon so affected, (2) reduce the amount of or extend the time of payment of any rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, or (3) reduce the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

ARTICLE NINE

The Trustee

SECTION 9.01. Acceptance of Trust. The Trustee hereby accepts the trust imposed upon it by this Agreement and agrees to perform the same as herein expressed.

SECTION 9.02. Duties and Responsibilities of the Trustee. In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exer-

cise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of the required percentage of principal amount of the then outstanding Trust Certificates specified in this Agreement, relating to the time, method and

place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement;

(d) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guarantee or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(e) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel and not contrary to any express provisions of this Agreement;

(f) the Trustee shall be under no obligation to exercise any of its rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby; and

(g) the Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

SECTION 9.03. Application of Rentals. The Trustee agrees to apply the rentals received by it under Section 5.04(B) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 5.04(B).

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the

filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers.

SECTION 9.04. Funds May Be Held by Trustee; Investments. Any funds at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself without allowing interest thereon.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 5.07 (hereinafter in this Section called "Replacement Funds") in Investments, at such prices, not in excess of fair market value at the time of investment, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates and interest coupons.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest, or apply such proceeds for payment against delivery of Trust Equipment.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 5.04(B)(1), an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest.

The Company, if not to the knowledge of the Trustee in Default, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

SECTION 9.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto or otherwise.

The Trustee may perform its powers and duties with respect to the delivery and acceptance of the Trust Equipment by or through such attorney, agents and servants as it shall appoint, and shall be answerable only for its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it in respect thereof with reasonable care.

The Trustee shall be entitled to receive payment of all of its expenses hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates and interest coupons.

Any moneys at any time held by the Trustee or any paying agent hereunder shall, until paid out or invested by the Trustee or any paying agent as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates and interest coupons.

SECTION 9.06. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 60 days' written notice to the Company and such resignation shall take effect 60 days after the delivery thereof to the Company or upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 9.07.

(b) The Trustee may be removed at any time by an instrument in writing signed by the holders of a majority in principal amount of the then outstanding Trust Certificates, delivered to the Trustee and to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of the Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of the Trust Certificates in the manner provided above. Every successor trustee appointed pursuant to this Section shall be a national bank, or a bank or trust company organized under the laws of the United States of America or any state thereof and having capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice of each resignation, removal or incapacity of the then Trustee or of a vacancy occurring in the office of the Trustee for any other cause and of each appointment by the Company of a successor trustee pursuant to paragraph (c) of this Section by mailing written notice of such event by first-class mail, postage prepaid, to the registered holders of all outstanding fully registered Trust Certificates and all Trust Certificates with interest coupons registered as to principal and, if there are then outstanding any Trust Certificates with interest coupons not registered as to principal, by publishing such notice once in each week for two successive weeks in a newspaper or financial journal of general circulation in the Borough of Manhattan, City and State of New York, printed in the English language.

SECTION 9.07. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 9.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if

originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments for more fully vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of the third paragraph of Section 9.05.

SECTION 9.08. Merger or Consolidation of Trustee. Any corporation qualified under the provisions of Section 9.06 into which the Trustee may be merged or with which it may be consolidated or any such corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 9.09. Return of Certain Moneys to Company. Notwithstanding any provision of this Agreement, any moneys paid to the Trustee which are applicable to the payment of the principal of or interest on any Trust Certificates, or any interest evidenced by interest coupons, which remain unclaimed for two years after the day when such moneys were due and payable shall then be repaid to the Company upon Request, and the holders of such Trust Certificates and interest coupons shall thereafter be entitled to look only to the Company for payment thereof and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Company as aforesaid, the Trustee may first publish a notice, in such form as may be deemed appropriate by the Trustee, in respect of the Trust Certificates so payable and not presented and in respect of the provisions hereof relating to the repayment to the Company of the moneys held for the payment thereof.

ARTICLE TEN

Miscellaneous

SECTION 10.01. Rights Confined to Parties and

Holder. Nothing expressed or implied herein shall be construed to confer upon any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates and interest coupons, any right, remedy or claim under or by reason of this Agreement or of any term, agreement or condition herein, and all the terms, agreements and conditions herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and interest coupons.

SECTION 10.02. No Recourse. No recourse under this Agreement, or of the guarantee endorsed on any Trust Certificate, shall be had against any person, solely by reason of the fact that he is a stockholder, officer or director of the Company, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being agreed that this Agreement and said guarantee are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by any person, solely by reason of the fact that he is a stockholder, officer or director of the Company, under or by reason of any of the terms, agreements or conditions contained in this Agreement or in said guarantee, or implied therefrom, and that any and all such personal liability, either at common law or in equity, or by statute or constitution, is hereby waived as a condition of and consideration for the execution of this Agreement and said guarantee.

SECTION 10.03. Binding upon Assigns. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 10.04. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, 1141 Maple Road, Post Office Box 880, Joliet, Illinois 60434, Attention of Comptroller, with a copy to the Company at 600 Grant Street, Post Office Box 536, Pittsburgh, Pennsylvania 15230, Attention of Secretary, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee, Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Department, or such other address as may hereafter be furnished to the Company in

writing by the Trustee. An affidavit by any person acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 10.05. Effect of Headings; Date Executed; Governing Law; and Counterparts. (a) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

(b) This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

(c) The provisions of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

(d) This Agreement is being executed in several counterparts, each of which is an original and all of which are identical. Each counterpart of this Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

MELLON BANK, N.A.,

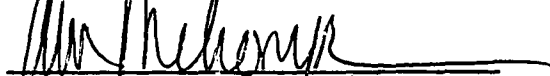
[Corporate Seal]

by




Vice President

Attest:


Authorized Officer

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY,

by



Vice President-Finance

[Corporate Seal]

Attest:


Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ALLEGHENY,)

On this 1ST day of DECEMBER 1980, before me personally appeared N. R. Smith, to me personally known, who, being by me duly sworn, says that he is Vice President of MELLON BANK, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said Bank, that said instrument was signed and sealed on behalf of said Bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Bank.

[Notarial Seal]

My Commission expires

RONALD J. McKENNA, Notary Public
Pittsburgh, Allegheny County, PA
My Commission Expires April 25, 1983

Ronald J. McKenna
Notary Public

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ALLEGHENY,)

On this 1st day of December 1980, before me personally appeared Vernon W. Kraetsch, to me personally known, who, being by me duly sworn, says that he is the Vice President-Finance of ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal]

My Commission expires

DOROTHY M. TELLEP, Notary Public
PITTSBURGH, ALLEGHENY COUNTY, PA
MY COMMISSION EXPIRES
DECEMBER 18, 1982

Dorothy M. Tellep
Notary Public

SCHEDULE I

<u>Description</u>	<u>Manufacturer</u>	<u>Quantity</u>	<u>Company's Car Numbers (all inclusive)</u>	<u>AAR Mechanical Designation</u>
52'6" new 100-ton capacity, steel floor, fixed end gondola cars	ACF Industries, Incorporated	680	87300-87979	GB